

Article 4C.

Structural Pest Control Act.

**§ 106-65.22. Title.**

This Article shall be known by the title of "Structural Pest Control Act of North Carolina of 1955." It is declared to be the policy of this State that the regulation of persons, corporations and firms engaged in the business of structural pest control in this State, as defined in G.S. 106-65.25, is in the public interest in order to ensure a high quality of workmanship and in order to prevent deception, fraud and unfair trade practices in the conduct of said business. The General Assembly finds that quality of structural pest control work is not easily determined by the general public due to the inaccessibility of the areas treated and the complexity of the methods of treatment. (1955, c. 1017; 1977, c. 231, s. 1.)

**§ 106-65.23. Structural Pest Control and Pesticides Division of Department of Agriculture and Consumer Services recreated; Director; powers and duties of Commissioner; Structural Pest Control Committee created; appointment; terms; powers and duties; quorum.**

(a) There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control and Pesticides Division. The Commissioner of Agriculture may appoint a Director of the Division, chosen from a list of nominees submitted to him or her by the Structural Pest Control Committee created in this section, whose duties and authority shall be determined by the Commissioner in consultation with the Committee. The Director shall be responsible for and answerable to the Commissioner of Agriculture and the Structural Pest Control Committee as to the operation and conduct of the Structural Pest Control and Pesticides Division. The Director shall act as secretary to the Structural Pest Control Committee.

(b) The Commissioner shall have the following powers and duties under this Article:

- (1) To administer and enforce the provisions of this Article and the rules adopted thereunder by the Structural Pest Control Committee. In order to carry out these powers and duties, the Commissioner may delegate to the Director of the Structural Pest Control and Pesticides Division the powers and duties assigned to him or her under this Article.
- (2) To assign the administrative and enforcement duties assigned to him or her in this Article.
- (3) To direct, in consultation with the Structural Pest Control Committee, the work of the personnel employed by the Structural Pest Control Committee and the work of the personnel of the Department assigned to perform the administrative and enforcement functions of this Article.
- (4) To develop, for the Structural Pest Control Committee's consideration for adoption, proposed rules, policies, new programs, and revisions of existing programs under this Article.
- (5) To monitor existing enforcement programs and to provide evaluations of these programs to the Structural Pest Control Committee.

- (6) To attend all meetings of the Structural Pest Control Committee, but without the power to vote unless the Commissioner attends as the designee on the Committee from the Department of Agriculture and Consumer Services.
- (7) To keep an accurate and complete record of all meetings of the Structural Pest Control Committee and to have legal custody of all books, papers, documents, and other records of the Committee.
- (8) To perform such other duties as may be assigned to him or her by the Structural Pest Control Committee.

(c) There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the Committee who shall be an epidemiologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company.

The Governor's initial appointees from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant.

One member of the Committee shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member of the Committee shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be actively engaged in the pest control

industry, licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and a resident of the State of North Carolina but not an affiliate of the same company as either of the two members from the industry appointed by the Governor. Appointments made by the General Assembly shall be for terms of four years. Vacancies in such appointments shall be filled in accordance with G.S. 120-122.

(d) The Structural Pest Control Committee shall have the following powers and duties:

- (1) To adopt rules and make policies as provided in this Article.
- (2) To issue, deny, suspend, revoke, modify, or restrict licenses, certified applicator cards, and registered technician cards under the provisions of this Article. In all matters affecting licensure, the decision of the Committee shall constitute the final agency decision.
- (3) Repealed by Session Laws 2013-265, s. 8, effective July 17, 2013.

(e) Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Five members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1057, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7; 1973, c. 556, s. 1; 1975, c. 570, ss. 1, 2; 1977, c. 231, s. 2; 1987, c. 827, s. 26; 1989, c. 238; c. 727, s. 219(30); 1997-261, s. 27; 1997-443, s. 11A.40; 1998-224, s. 19(a); 1999-381, s. 1; 2000-175, s. 1; 2013-265, s. 8.)

#### **§ 106-65.24. Definitions.**

As used in this Article:

- (1) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.
- (1a) "Applicant for a certified applicator's identification card" means any person making application to use restricted use pesticides in any phase of structural pest control.
- (2) "Applicant for a license" means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural

pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.

- (3) "Attractants" means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.
- (3a) Repealed by Session Laws 1989, c. 725.
- (3b) "Branch Office" means any office under the management of a licensee that is not a home office.
- (4) "Certified applicator" means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.
- (5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.
- (6) "Committee" means the Structural Pest Control Committee.
- (6a) "Deviation" means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.
- (7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.
- (8) Repealed by Session Laws 1975, c. 570, s. 4.
- (8a) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture and Consumer Services.
- (9) "Employee" means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.
- (9a) "Enforcement agency" means the Structural Pest Control and Pesticides Division of the Department of Agriculture and Consumer Services.
- (10) "Fumigants" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.
- (11) "Fungi" means wood-decaying fungi.
- (11a) "Home office" means the office identified to the enforcement agency by a licensee as his or her principal place of business.
- (12) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

- (13) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.
- (14) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- (14a) The term "labeling" means all labels and other written, printed, or graphic matter:
  - a. Upon the pesticide (or device) or any of its containers or wrappers;
  - b. Accompanying the pesticide (or device) at any time;
  - c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.
- (15) "Licensee" means any person qualified for and holding a license for any phase of structural pest control pursuant to this Article.
- (16) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
- (17) "Pest" means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.
- (18) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
- (19) "Registered pesticide" means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.
- (19a) "Registered technician" means any individual who is required to be registered with the Structural Pest Control and Pesticides Division under G.S. 106-65.31.
- (20) "Repellents" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.
- (21) "Restricted use pesticide" means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.
- (22) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.
- (23) "Structural pest control" means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all

phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

- (24) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3; 1973, c. 556, s. 2; 1975, c. 570, ss. 3, 4; 1977, c. 231, ss. 3-5; 1989, c. 725, s. 1; 1997-261, ss. 28, 29; 1999-381, s. 2; 2013-265, s. 9.)

**§ 106-65.25. Phases of structural pest control; prohibited acts; license required; exceptions.**

(a) The Committee shall classify license phases to be issued under this Article. Separate phases or subphases shall be specified for:

- (1) Control of household pests by any method other than fumigation ("P" phase);
- (2) Control of wood-destroying organisms by any method other than fumigation ("W" phase); and
- (3) Fumigation ("F" phase).

(b) It shall be unlawful for any person to:

- (1) Advertise as, offer to engage in, or engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control or otherwise act in the capacity of a structural pest control licensee unless the person is licensed pursuant to this Article or has engaged the services of a licensee as a full-time regular employee who is responsible for the structural pest control performed by the company. A license is required for each phase of structural pest control.
- (2) Hold more than one license for each phase of structural pest control.
- (3) Use a restricted use pesticide in any phase of structural pest control, whether it be on the person's own property or on the property of another, unless the person:
  - a. Qualifies as a certified applicator for that phase of structural pest control; or
  - b. Is under the direct supervision of a certified applicator who possesses a valid certified applicator's identification card for that phase of structural pest control.
- (4) Use or supervise the use of restricted use pesticides in demonstrating or supervising a demonstration to the public of the proper use and techniques of the application of pesticides or conducting field research with pesticides unless:
  - a. The person possesses a valid certified applicator's identification card;
  - b. The person is conducting laboratory research involving restricted use pesticides; or
  - c. The person is a doctor of medicine or a doctor of veterinary medicine applying restricted use pesticides as drugs or medication during the course of his or her normal professional practice.

This subdivision applies to all persons, including cooperative extension specialists demonstrating pesticide products, individuals demonstrating methods used in public programs, and local, State, federal, commercial, and other persons conducting field research on or using restricted use pesticides.

- (c) It shall be unlawful for any licensee to do any of the following:
- (1) Establish, be in charge of, or manage any branch office in excess of the number of branch offices that may be established, supervised, or managed by a licensee as set forth in rules adopted by the Committee.
  - (2) Fail to supervise the structural pest control performed out of the licensee's home office or any branch office under the licensee's management.
  - (3) Allow his or her license to be used by any person or company for which he or she is not a full-time regular employee actively and personally engaged in the supervision of the structural pest control performed under the license.
  - (4) Use any pesticide, material, or device prohibited by the Committee or use any approved pesticide, material, or device in a manner prohibited by the Committee.
  - (5) Use or supervise the use of restricted use pesticides in a phase of structural pest control for which the person is not licensed or qualified as a certified applicator unless the person's use is under the supervision of a licensee or certified applicator certified in that phase of structural pest control.

(c1) The Committee shall adopt rules that permit a licensee to establish branch offices in addition to a home office. In no event shall the rules adopted restrict the number of branch offices a licensee can establish, supervise, or manage to fewer than two branch offices. The rules shall include provisions to ensure that the licensee can adequately supervise all structural pest control performed from the offices and under his or her license.

(d) A license is not required for any person (or the person's full-time regular employees) doing structural pest control on the person's own property. No fee may be charged for structural pest control performed by any such person.

(e), (f) Repealed by Session Laws 1999-381, s. 3.

(g) Any person issued a license for any one or any combination of the phases of structural pest control shall be deemed to be a "certified applicator" to use or supervise the use of restricted use pesticides so long as the pesticides are being used only in the phase of structural pest control for which the person is licensed.

(h) Licenses and certified applicator's identification cards may only be issued to individuals. License certificates and certified applicator's identification cards shall be issued in the name of the individual, shall bear the name and address of the individual's business or employer's business and shall indicate the phase or phases for which the individual is qualified and such other information as the Committee may specify. (1955, c. 1017; 1957, c. 1243, s. 3; 1967, c. 1184, s. 4; 1973, c. 556, s. 3; 1975, c. 570, s. 5; 1989, c. 725, s. 2; 1999-381, s. 3.)

#### **§ 106-65.26. Qualifications for certified applicator and licensee; applicants for certified applicator's identification card and license.**

(a) An applicant for a certified applicator's identification card or license must present satisfactory evidence to the Committee concerning his qualifications for such card or license.

(b) Certified Applicator. – Each applicant for a certified applicator's identification card must demonstrate that he possesses a practical knowledge of the pest problems and pest control practices associated with the phase or phases of structural pest control for which he is seeking certification.

(c) Licensee. – The basic qualifications for a license shall be:

- (1) Qualify as a certified applicator for the phase or phases of structural pest control for which he is making application; and
- (2) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied; or
- (3) One or more years' training in specialized pest control, control of wood-destroying organisms or fumigation under university or college supervision may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination; or
- (4) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination.

(d) All applicants for license must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms, or fumigation. No applicant is entitled to take an examination for the issuance of a license pursuant to this Article who has within five years of the date of application been convicted, entered a plea of guilty or of nolo contendere, or forfeited bond in any State or federal court for a violation of G.S. 106-65.25(b), any felony, or any crime involving moral turpitude.

(e) The Department of Public Safety may provide a criminal record check to the Committee for a person who has applied for a new or renewal license through the Committee. The Committee shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Committee shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection. (1955, c. 1017; 1967, c.



1184, s. 5; 1973, c. 556, s. 4; 1975, c. 570, s. 6; 1999-381, s. 4; 2002-147, s. 13; 2014-100, s. 17.1(o).)

**§ 106-65.27. Examinations of applicants; fee; license not transferable.**

(a) Certified Applicator. – All applicants for a certified applicator's identification card shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Competency shall be determined on the basis of written examinations to be provided and administered by the Committee and, as appropriate, performance testing. Testing shall be based upon examples of problems and situations appropriate to the particular phase or subphase of structural pest control for which application is made and shall include, where relevant, the following areas of competency:

- (1) Label and labeling comprehension.
- (2) Safety factors associated with pesticides – toxicity, precautions, first aid, proper handling, etc.
- (3) Influence of and on the environment.
- (4) Pests – identification, biology, and habits.
- (5) Pesticides – types, formulations, compatibility, hazards, etc.
- (6) Equipment – types and uses.
- (7) Application techniques.
- (8) Laws and regulations.

An applicant for a certified applicator's identification card shall submit an examination fee of twenty-five dollars (\$25.00) for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase may be taken at the same time at any regularly scheduled examination. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made.

(b) License. – Each applicant for an original license must demonstrate upon written examination, to be provided and administered by the Committee, his competency as a structural pest control operator for the phase or subphase in which he is applying for a license. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations shall be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made. All applicants for a license shall register with the Division on a prescribed form. A license examination fee of fifty dollars (\$50.00) shall be charged for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase of structural pest control may be taken at the same time.

(c) A license, certified applicator's identification card or registered technician's identification card is not transferable from one person to another. A licensee or certified applicator may change the name of his business or employer's business on his license certificate or certified applicator's identification card upon application to the Division.

(c1) When there is a transfer of ownership, management, operation of a structural pest control business or in the event of the death or disability of a licensee there shall be not more than a total of 90 days during any 12-month period in which said business shall operate without a licensee assigned to it; provided that, in the event of the death or disability of a licensee, the Committee shall have the authority to grant up to an additional 90 days within the 12-month period in which a business may operate without a licensee assigned to it.

The owner, partnership, corporation, or other entity operating said business shall, within 10 days of such transfer or disability or within 30 days of death, designate in writing to the Division a certified applicator who shall be responsible for and in charge of the structural pest control operations of said business during the 90-day period. If the owner, partnership, corporation, or other entity operating the business fails to designate a certified applicator who shall be responsible for the operation of the business during the 90-day period, the business shall cease all structural pest control activities upon expiration of the applicable notification period and shall not resume operations until a certified applicator is so designated.

During the 90-day period the use of any restricted use pesticide shall be by or under the direct supervision of the certified applicator designated in writing to the Division. The designated certified applicator shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

The new licensee shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

(d) The Committee shall by regulation provide for:

- (1) Establishing categories of certified applicators, along with such appropriate subcategories as are necessary, to meet the requirements of this Article;
- (2) All licensees licensed prior to October 21, 1976, to become qualified as certified applicators; and
- (3) Requalifying certified applicators thereafter as required by the federal government at intervals no more frequent than that specified by federal law and federal regulations. (1955, c. 1017; 1967, c. 1184, s. 6; 1973, c. 556, ss. 5, 6; 1975, c. 570, s. 7; 1977, c. 231, s. 6; 1989, c. 725, s. 3; 1999-381, s. 5; 2010-31, s. 11.2(a).)

#### **§ 106-65.28. Revocation or suspension of license or identification card.**

(a) Any license or certified applicator's identification card or registered technician's identification card may be denied, revoked or suspended by a majority vote of the Committee for any one or more of the following causes:

- (1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.
- (2) Failure of the licensee or certified applicator to give the Committee, the Commissioner, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.

- (3) Failure of the licensee or certified applicator to make registrations herein required or failure to pay the registration fees.
  - (4) Any misrepresentation in the application for a license or certified applicator's identification card or registered technician's identification card.
  - (5) Willful violation of any rule or regulation adopted pursuant to this Article.
  - (6) Aiding or abetting a licensed or unlicensed person or a certified applicator or a noncertified person to evade the provisions of this Article, combining or conspiring with such a licensed or unlicensed person or a certified applicator or noncertified person to evade the provisions of this Article, or allowing one's license, certified applicator's identification card or registered technician's identification card, to be used by any person other than the individual to whom it has been issued.
  - (7) Impersonating any State, county or city inspector or official.
  - (8) Storing or disposing of containers or pesticides by means other than those prescribed on the label or adopted regulations.
  - (9) Using any pesticide in a manner inconsistent with its labeling.
  - (10) Payment, or the offer to pay, by any licensee to any party to a real estate transaction of any commission, bonus, rebate, or other thing of value as compensation or inducement for the referral to such licensee of structural pest control work arising out of such transaction.
  - (11) Falsification of records required to be kept by this Article or the rules and regulations of the Committee.
  - (12) Failure of a licensee or certified applicator to pay the original or renewal license or identification card fee when due and continuing to operate as a licensee or a certified applicator.
  - (13) Conviction of a felony or conviction of a violation of G.S. 106-65.28 within five years preceding the date of application for a license or a certified applicator's identification card or conviction of any said crimes while such license or card is in effect.
  - (14) Applying any substance that:
    - a. Has the active ingredients contained in a pesticide that is registered pursuant to G.S. 143-442, but
    - b. Is not registered as a pesticide pursuant to G.S. 143-442.
  - (15) Combining any substance whose application is prohibited under subdivision (14) of this subsection with any other substance to apply as a pesticide or to apply for any other reason, whether the combination occurs before, during, or after the application.
- (b) Suspension of any license or certified applicator's identification card or registered technician's identification card under the provisions of this Article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.
- (c) If a license or certified applicator's identification card or registered technician's identification card is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Commissioner or his authorized representative.
- (d) Any licensee whose license or certified applicator or operator whose identification card is revoked under the provisions of this Article shall not be eligible to apply for a new license or

certified applicator's identification card or registered technician's identification card hereunder until two years have elapsed from the date of the order revoking said license or certified applicator's identification card or registered technician's identification card or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation.

(e) The lapsing of a State structural pest control license or certified applicator's identification card or registered technician's identification card by operation of law or the voluntary surrender of said license or said card shall not deprive the Committee of jurisdiction to proceed with any investigation or disciplinary proceedings against such licensee or card holder or to render a decision suspending or revoking such license or card.

(f) The Committee may deny an application for a license, a certified applicator's identification card or a registered technician's identification card of any person whose license, certified applicator's identification card or equivalent thereto has been suspended or revoked in another state within two years prior to the application.

(g) Any pesticide, material, or device for which such information is requested by the Committee pursuant to G.S. 106-65.29(9a) and denied by the registrant or manufacturer shall not be used in any structural pest control performed for compensation and may only be used by an individual performing structural pest control on the individual's own property. (1955, c. 1017; 1967, c. 1184, s. 7; 1973, c. 556, ss. 7, 8; 1975, c. 19, s. 30; c. 570, ss. 8-13; 1977, c. 231, ss. 7-9; 1987, c. 827, s. 27; 1989, c. 725, s. 4; 1995, c. 478, s. 2; 1999-381, s. 6.)

#### **§ 106-65.29. Rules and regulations.**

In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee may adopt rules with respect to:

- (1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control, and the amount and kind of training required of an applicant for a registered technician's identification card.
- (2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.
- (3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.
- (4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.
- (5) The business records to be made and maintained by licensees and certified applicators under this Article necessary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.
- (6) The credentials and identification required of licensees and certified applicators, their employees and equipment, including service vehicles, when engaged in any work defined under this Article.
- (7) Safety methods and procedures for structural pest control work.
- (8) Fees for reinspection following a finding of a deviation, as defined by the Committee.

- (9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund.
- (9a) Efficacy data and other technical information to be submitted by registrants and manufacturers of pesticides and other materials or devices for review and approval, in order for the Committee and the enforcement agency to ensure the efficacy of pesticides and other materials or devices used in structural pest control in this State. This subdivision does not require either the Committee or the enforcement agency to disclose any information that is confidential information within the meaning of G.S. 132-1.2.
- (10) The policies and programs set forth in this Article. (1955, c. 1017; 1967, c. 1184, s. 8; 1975, c. 570, s. 14; 1977, c. 231, s. 9; 1981, c. 495, s. 3; 1987, c. 368, s. 2; c. 827, s. 28; 1989, c. 725, s. 5; 1999-381, s. 7.)

**§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.**

(a) For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Commissioner may enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

(b) Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder.

(c) The Commissioner shall have authority to appoint personnel of the Structural Pest Control and Pesticides Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or a registered technician's identification card as issued under the

provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively. (1955, c. 1017; 1967, c. 1184, s. 9; 1973, c. 556, s. 9; 1975, c. 570, s. 15; 1977, c. 231, s. 10; 1989, c. 725, s. 6; 1999-381, s. 8; 2013-265, s. 10.)

**§ 106-65.31. Annual certified applicator card and license fee; registration of servicemen, salesmen, solicitors, and estimators; identification cards.**

(a) Certified Applicator's Identification Card. – The fee for issuance or renewal of a certified applicator's identification card shall be fifty dollars (\$50.00). Within 75 days after the employment of a certified applicator, the licensee shall apply to the Division for the issuance of a certified applicator's identification card. A certified applicator's identification card shall expire on June 30 of each year and shall be renewed annually. All certified applicators who fail or neglect to renew their card on or before June 30 but make application before January 1 of the following year may have their card renewed without having to be reexamined unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). All applicants submitting applications for the renewal of their cards after June 30 shall not use or supervise the use of restricted use pesticides until a new card has been issued.

Any certified applicator whose employment is terminated with a licensee or agent prior to the end of any license year may at any time prior to the end of the license year be reissued a certified applicator's identification card for the remainder of the license year as an employee of another licensee or agency or as an individual for a fee of five dollars (\$5.00). The licensee shall notify the Division of the termination or change in status of any certified applicator.

Any certified applicator whose identification card is lost or destroyed or changed in any way may be reissued a new card for the remainder of the license year for a fee of five dollars (\$5.00).

(b) License. – The fee for the issuance or renewal of a license for any one phase of structural pest control shall be two hundred dollars (\$200.00). Each additional phase shall be seventy-five dollars (\$75.00). The fee for each subphase shall be fifteen dollars (\$15.00). Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew their license on or before June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars (\$10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars (\$10.00).

(b1) Registration. – Within 75 days after the hiring of an employee who is either an estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the issuance of an identification card for such employee. The application must be accompanied by a fee of forty dollars (\$40.00) for each card. The card shall be issued in the name of the employee and shall bear the name of the employing licensee, the employer's license number and phases, the name and address of the employer's business, and such other information as the Committee may specify. The identification card shall be carried by the employee on his person at all times while performing any phase of structural pest control work. The card must be displayed upon demand by the Commissioner, the Committee, the Division, or any representative thereof, or the person for whom any phase of structural pest control work is being performed. A registered technician's identification card must be renewed annually on or before June 30 by payment of a renewal fee of forty dollars (\$40.00). If a card is lost or destroyed the licensee may secure a duplicate for a fee of five dollars (\$5.00). The licensee shall notify the Division of the termination or change in status of any registered technician. All identification cards expire when a license expires.

When a license is reissued, the licensee shall be responsible for registering and securing identification cards for all existing employees who engage in structural pest control within 10 days of the reissuance of the license.

A certified applicator who is not an employee of a licensed individual shall register the names of all employees under his supervision who are engaged in the performance of structural pest control with the Division and shall purchase a registered technician's identification card for each such employee.

(b2) No person shall act as an estimator, serviceman, salesman, solicitor, or agent for any licensee under this Article nor shall any such person be issued an identification card by the Committee who has within three years of the date of application for an identification card been convicted of, plead guilty or nolo contendere, or forfeited bond in any State or federal court for a felony or any violation of the North Carolina Structural Pest Control Act or any regulation promulgated by the Committee. This provision shall not apply to any person whose citizenship has been restored as provided by law.

(b3) No person or business shall advertise as a contractor for structural pest control services nor actually contract for such services unless that person or business advertises or contracts in the name of the company shown on the license certificate of the licensee or identification card of the certified applicator who will perform the services.

(c) Notwithstanding any other provision of this law, the Committee may adopt rules to provide for the issuance of licenses, certified applicator's cards, and registered technician's identification cards with staggered expiration dates and may prorate renewal fees on a monthly basis to implement such rules. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10; 1973, c. 47, s. 2; c. 556, s. 10; 1975, c. 570, s. 16; 1981, c. 495, s. 2; 1987, c. 368, s. 3; 1989, c. 544, s. 16; c. 725, s. 7; 1991, c. 636, s. 7; 1999-381, s. 9; 2010-31, s. 11.2(b); 2011-145, s. 31.8(b).)

**§ 106-65.32. Administrative Procedure Act applicable.**

A denial, suspension, or revocation of a license, certified applicator card, or identification card under this Article shall be made in accordance with Chapter 150B of the General Statutes. (1955, c. 1017; 1957, c. 1243, s. 5; 1967, c. 1184, s. 11; 1973, c. 556, s. 11; 1975, c. 570, s. 17; 1987, c. 827, s. 29.)

**§ 106-65.33. Violation of Article, falsification of records, or misuse of registered pesticide a misdemeanor.**

(a) Any person who shall be adjudged to have violated any provision of this Article or who falsifies any records required to be kept by this Article or by the rules and regulations pursuant to this Article or who uses a registered pesticide in a manner inconsistent with its labeling shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Committee, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed to require the Committee or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for a minor violation of this Article whenever the Committee or Commissioner determines that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12; 1977, c. 231, s. 11; 1993, c. 539, s. 740; 1994, Ex. Sess., c. 24, s. 14(c); 1999-381, s. 10.)

**§ 106-65.34. Repealed by Session Laws 1967, c. 1184, s. 13.**

**§ 106-65.35. Repealed by Session Laws 1973, c. 556, s. 12.**

**§ 106-65.36. Reciprocity; intergovernmental cooperation.**

The Committee may cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article. (1973, c. 556, s. 13.)

**§ 106-65.37. Financial responsibility.**

(a) The Committee may require by regulation from a licensee or certified applicator or an applicant for a license or certified applicator's identification card under this Article evidence of his financial ability to properly indemnify persons suffering from the use or application of pesticides in the form of liability insurance or other means acceptable to the Committee. The amount of this insurance or financial ability shall be determined by the Committee.

(b) Any regulation adopted by the Committee pursuant to G.S. 106-65.29 to implement this section may provide for such conditions, limitations and requirements concerning the financial responsibility required by this section as the Committee deems necessary including but not limited to notice or reduction or cancellation of coverage and deductible provisions. Such regulations may classify financial responsibility requirements according to the separate license classifications and subclassifications as may be prescribed by the Committee. (1975, c. 570, s. 18.)



**§ 106-65.38. Disposition of fees and charges.**

Except as otherwise provided in G.S. 106-65.41, all fees and charges received by the Division under this Article shall be deposited in the Department of Agriculture and Consumer Services General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts. (1977, c. 231, s. 12; 1997-261, s. 109; 1998-215, s. 5(b).)

**§ 106-65.39. Judicial enforcement.**

The commissioner may apply to either the superior or district court for an injunction to prevent and restrain violations of this Article and the rules and regulations adopted under this Article, provided however, that the district court shall have original jurisdiction to hear and determine alleged misdemeanor violations of the Article and the rules and regulations of the committee. (1977, c. 231, s. 13; 1981, c. 836.)

**§ 106-65.40. City privilege license tax prohibited.**

A city, as defined in G.S. 160A-1(2), may not levy a privilege license tax on persons engaged in a business licensed under this Article. (1983, c. 193.)

**§ 106-65.41. Civil penalties.**

A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through (12) and G.S. 106-65.28(a)(14) and (15), or who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article. In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987, c. 368, s. 1; 1989, c. 725, s. 8; 1998-215, s. 5(a); 1999-381, s. 11.)